

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 2008-0022

**ORDER DENYING IN PART AND GRANTING IN PART RESPONDENTS' MOTION
FOR RECONSIDERATION AND MODIFICATION OF AGENCY DECISION**

**IN THE MATTER OF THE COMPLAINT FILED BY DOUGLAS BRUCE REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY THE SCHUCK
CORPORATION, STEPHEN M. SCHUCK, MARK WALLER, AND THE "COMMITTEE
TO ELECT MARK WALLER" CANDIDATE COMMITTEE.**

The Administrative Law Judge (ALJ) issued an Agency Decision in this matter on September 2, 2008 finding that Respondents had committed violations of the campaign finance laws, and imposing a \$528.40 penalty against the Schuck Corporation and a \$2,450 penalty against Mr. Waller and the Waller Committee.

On September 24, 2008, Respondents filed a motion for reconsideration and modification of the Agency Decision, alleging several errors by the ALJ. Complainant Douglas Bruce filed no response. For the reasons stated below, the ALJ finds no merit in Respondents' allegations of error, but does agree that the monetary penalty assessed against Mr. Waller and the Waller Committee should be reduced to \$500. An order modifying the Agency Decision is issued herewith.¹

Discussion

The Schuck Corporation

The Schuck Corporation argues that Mr. Schuck had "no intention of proffering a corporate contribution" and "was not aware that his actions constituted a violation." Therefore, Schuck argues, no penalty should be imposed. *Motion*, p. 4. The ALJ cannot agree.

Although Mr. Schuck "was not personally aware that the cost of printing and mailing campaign literature was considered a contribution" (*Agency Decision*, p. 7), he nonetheless intentionally involved his corporation in supporting Waller's campaign. This was evident from the fact that he put the fund raising letter on his corporate letterhead and incurred \$264.20 in corporate expense to prepare and mail the letter, with no expectation of being reimbursed for that expense. *Agency Decision*, Findings of Fact 7 and 8. The fact that Mr. Schuck may not have realized these types of activities violated the law is not a defense. The constitutional prohibition against corporate contributions

¹ If an agency decision has not been appealed, the ALJ retains authority to amend the agency decision within the appeal filing period. *Bethesda Found. v. Colo. Dep't of Soc. Servs.*, 877 P.2d 860, 862 (Colo.1994).

makes no allowance for ignorance of the law. Colo. Const. art. XXVIII, § 3(4). The ALJ did, however, consider Mr. Schuck's state of mind in choosing the lowest available penalty multiplication factor. *Agency Decision*, p. 7.

Schuck also argues the ALJ should have considered the "arcane" nature of the campaign finance laws, and should not have held Schuck responsible for something even the ALJ did not completely comprehend. *Motion*, p. 4. Again, the ALJ cannot agree. The prohibition against corporate contributions is not "arcane" in the sense that it is secret or mysterious. The prohibition is clearly and unambiguously set forth in § 3(4) of Article XXVIII of the Colorado Constitution. Furthermore, the fact that a contribution includes anything of value given, directly or indirectly, to promote a candidate's election is clearly and unambiguously stated in § 2(5) of the constitution. While Schuck may not have appreciated his conduct was wrongful, the prohibition against what he was doing was certainly not hidden.²

Finally, Schuck argues that because Waller reimbursed his corporation for its expenses, there was no contribution. The ALJ has fully addressed and rejected this argument in the *Agency Decision*, p. 5.

The ALJ therefore reaffirms the findings of fact, conclusions of law and penalty imposed with respect to the Schuck Corporation.

Waller and the Waller Campaign

Waller argues that because the ALJ found that he did not solicit Schuck to make a corporate contribution, was not aware that Schuck intended to make a corporate contribution, and never agreed to accept the mailing on corporate letterhead, he cannot be held liable for accepting that contribution. *Motion*, pp. 1-2. The ALJ, however, did not find Waller liable for soliciting an illegal corporate contribution. Rather, the ALJ found Waller liable for failing *to report* that he had received a contribution from Schuck, regardless of it was a personal or corporate contribution. *Agency Decision*, p. 6.

As noted in the *Agency Decision*, a contribution is received when the candidate committee accepts it. *Agency Decision*, p. 5, citing 8 CCR 1505-6, Rule 4.3.1. Waller correctly notes in his motion that the question of whether a gift has been accepted is a question to be resolved by the fact finder. *Motion*, p. 2. The ALJ, as fact finder, concluded that Waller had accepted a contribution worth \$264.20 based upon findings that Waller met with Schuck and personally solicited his fund raising support (Finding of Fact 2), that Waller reviewed and approved the draft of Schuck's fund-raising letter on or about May 13, 2008 (Finding of Fact 4), and that on or about May 30, 2008 Schuck sent the letter along with a business reply envelope supplied by Waller to 208 potential donors and to Waller. Finding of Fact 7. Clearly, Waller was aware that Schuck was

² The ALJ's reference to Schuck's endorsement of Waller is not evidence the issue is confused. Throughout the *Agency Decision*, beginning with the statement of issues on pages 1-2, the ALJ defines the Schuck Corporation's "fund raising effort" as the prohibited corporate contribution, not Schuck's personal endorsement of Waller. The reference to Schuck's endorsement, found in Finding of Fact 11, is merely recognition of the fact that the Waller Committee never reported any aspect of Schuck's activity as a contribution. It is not, as Schuck implies, a finding that Schuck's endorsement alone was a contribution.

preparing and mailing fund raising letters on his behalf and accepted that effort. It was not until July 12, 2008, after Waller became aware of Bruce's complaint and consulted with his attorney, that he decided to refund to Schuck the expense of preparing and mailing the letter. Finding of Fact 10. Waller's belated attempt to avoid responsibility for the contribution by reimbursing Schuck and calling it an "expense" does not alter the fact that he had already accepted the contribution and failed to report it.

Finally, Waller contends the penalty of \$2,450 is excessive when compared to a previous decision issued by this same ALJ. In that decision, *In re: Complaint of Steven Durham*, Case No. OS 2006-0004, Agency Decision dated May 31, 2008, the ALJ computed the \$50 dollar per day non-reporting penalty from the date the report was due until the date the complaint was filed. In the present case, the ALJ computed Waller's \$50 per day penalty from the date the report was due until the date of hearing. Had the penalty been computed only until the date of the complaint, as in *Durham*, the penalty would have been \$500 (\$50 per day x 10 days), rather than \$2,450 (\$50 per day x 49 days).

As Waller observes, Colo. Const. art. XXVIII, § 10(2), which authorizes the non-reporting penalty, does not specify an end date for the daily penalty. The ALJ in *Durham* chose to interpret that section in the manner most favorable to the defendant and as a matter of discretion selected the complaint filing date as the end date. Different circumstances might well support a different outcome. Nonetheless, in the absence of any previously articulated reason for selecting the date of hearing as the end date in this case, the ALJ agrees that the penalty should be modified. Accordingly, the ALJ revises the penalty to be assessed against Mr. Waller and the Waller Committee to \$500, to be paid to the Secretary of State within 30 days of the amended Agency Decision.

Done and Signed

October 16, 2008

ROBERT N. SPENCER
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above **ORDER DENYING IN PART AND GRANTING IN PART RESPONDENTS' MOTION FOR RECONSIDERATION AND MODIFICATION OF AGENCY DECISION** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Rep. Douglas Bruce
P.O. Box 26018
Colorado Springs, CO 80936

Robert S. Gardner, Esq.
Law Office of Robert S. Gardner
128 South Tejon Street, Suite 206
Colorado Springs, CO 80903

and

William Hobbs
Secretary of State's Office
1700 Broadway, Suite 270
Denver, CO 80290

on this ____ day of October 2008.

Court Clerk